

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3768 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI SHANKARBHAI DASH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3768 of 2001
MS SUBHADRA G PATEL for Petitioner No. 1
MR SS PATEL AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/10/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section
3 (2) of the Gujarat Prevention of Anti Social Activities
Act, 1985 ('the Act' for short), District Magistrate,
Bharuch, vide order dated April 3, 2001, Annexure A to

the petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the activities of the petitioner as detrimental to the maintenance of public order in view of his involvement in one offence registered under the Suppression of Immoral Traffic in Women and Girls Act, 1956 and, therefore, with a view to curb his antisocial activities the petitioner is detained. Besides this statements of two anonymous witnesses in unregistered cases are also recorded which also suggest that the petitioner is a habituated in committing the aforesaid act and, therefore, the detaining authority considered the said activities of the petitioner as detrimental to the maintenance of public order and by exercising powers under section 9 (2) of the Act by not disclosing the identity of the witnesses the petitioner is detained.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of mandamus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. Subhadraben Patel, learned advocate for the petitioner has restricted her arguments to the effect that subjective satisfaction recorded by the detaining authority cannot be considered as genuine as there is only one case registered against the petitioner for the offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956. So far as the privilege claimed under Section 9 (2) of the Act is concerned, it cannot be called as genuine in the absence of reply affidavit filed on behalf of the detaining authority. On the aforesaid two grounds, she urged to quash and set aside the impugned order of detention and set the petitioner at liberty forthwith.

5. Mr. S.S. Patel, learned AGP has appeared on behalf of the respondents and opposed the petition by making oral submissions. He, however, does not dispute the fact that against the petitioner only one case is registered for the offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 and, therefore, it can be called an isolated incident. So far as the privilege claimed under Section 9 (2) of the Act is concerned, he conceded that no affidavit in reply is filed by the detaining authority. He, therefore, urged to pass appropriate order in light of the settled

principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. On having perusal of the record of the case, there is no dispute that against the petitioner only one case is registered for the commission of offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 which is an isolated act and, therefore, it cannot be said that the petitioner is a habitually committing offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956. Besides this, the privilege claimed under section 9 (2) of the Act also cannot be called genuine in absence of the affidavit in reply filed by the detaining authority. Therefore, on these grounds, the order of detention is vitiated and deserves to be quashed and set aside and the petition deserves to be allowed.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)